

Title	Pretrial Rules
Summary	Two pretrial rules on hearings would be amended. A rule on motions concerning advisory juries would be repealed.
Source	Civil and Small Claims Advisory Committee
Staff	Patrick O'Donnell, Committee Counsel, 415-865-7665, patrick.o'donnell@jud.ca.gov
Discussion	<p><u>Rules 321 and 323</u></p> <p>These rules concerning law and motion hearings would be amended to clarify certain matters and to use plain language. In rule 321 (Time of hearing), subdivision (b) would be amended to state that a party “must immediately” notify the court if a matter will not be heard on the scheduled date. More detailed provisions on notification of the court and of the consequences of failure to do so were considered, but the proposed modification would appear to provide sufficient direction to parties whose motions will not be heard.</p> <p>Rule 323 (Evidence at hearing) would also be amended. It presently requires that evidence received at a law and motion hearing must be by declaration, affidavit, or request for judicial notice, “except as allowed in the court’s discretion for good cause shown or as permitted by local rule.” The provision allowing for local rules on this subject would be deleted as inconsistent with the goal of promoting uniformity of procedure and practice. A new subdivision (b) would be created for the provisions concerning requests to present oral testimony.</p> <p>In both rules 321 and 323, the word “must” would replace “shall.”</p> <p><u>Rule 377</u></p> <p>Rule 377 concerns advisory juries. It prescribes certain procedures and times for motions to set issues for a jury trial and motions to vacate a setting for a jury trial in cases where the right to a jury trial “is not guaranteed by law.” The time for motions to set a jury trial under the rule is required to be “before or at the time of filing the at-issue memorandum.” The time for motions to vacate the setting of a jury trial, when the setting is made by the court without the opportunity for the party to oppose it, is “within five days after receiving notice from the clerk that the case has been set for jury trial.”</p>

Rule 377 no longer appears to be needed. The rule, which has not been modified since it was adopted effective January 1, 1984, is out-of-date. Under the rule, the timing of motions to set for jury trial is linked to the filing of the “at-issue memorandum.” However, in most courts, those memorandums have already been replaced by other documents. Effective July 1, 2002, the at-issue memorandum will be superceded statewide by the mandatory new *Case Management Statement* (form CM–110).

More importantly, there does not seem to be a need for the procedures and time limitations prescribed in rule 377. Indeed, the procedures and times prescribed in the rule appear to be unnecessarily constraining. Courts should be able to consider—and parties should be able to make—motions or other requests for an advisory jury, and motions to vacate the setting for a jury trial, in a fairly flexible manner.

Under modern case management practices, the issues concerning whether to hold a trial will often be dealt with by the court at the time of the case management conference. In a proper case, these issues could also be handled earlier or later. Accordingly, the provisions of rule 377 no longer seem necessary, and the rule would be repealed.

Attachments

Rules 321 and 323 of the California Rules of Court would be amended and rule 377 would be repealed, effective January 1, 2003, to read:

Rule 321. Time of hearing

- (a) **[General schedule]** The clerk ~~shall~~ must post a general schedule showing the days and departments for holding each type of law and motion hearing.
- (b) **[Duty to notify if matter not to be heard]** The moving party ~~shall promptly~~ must immediately notify the court if a matter will not be heard on the scheduled date.
- (c) **[Notice of nonappearance]** A party may give notice that he or she will not appear at a law and motion hearing and submit the matter without an appearance unless the court orders otherwise. The court ~~shall~~ must rule on the motion as if the party had appeared.
- (d) **[Action if no party appears]** If no party appears at a law and motion hearing the court may drop the matter from the calendar, to be reset only upon motion. In its discretion, the court may rule on a law and motion matter notwithstanding the failure of any party to appear at the hearing.

Rule 323. Evidence at hearing

- (a) **[Restrictions on oral testimony]** Evidence received at a law and motion hearing ~~shall~~ must be by declaration, ~~and~~ affidavit ~~and~~ or by request for judicial notice without testimony or cross-examination, except as allowed in the court's discretion for good cause shown ~~or as permitted by local rule~~.
- (b) **[Request to present oral testimony]** A party seeking permission to introduce oral evidence, except for oral evidence in rebuttal to oral evidence presented by the other party, ~~shall~~ must file, no later than three court days before the hearing, a written statement ~~setting forth~~ stating the nature and extent of the evidence proposed to be introduced and a reasonable time estimate for the hearing. When the statement is filed less than five court days before the hearing, the filing party ~~shall~~ must serve a copy on the other parties in a manner to assure delivery to the other parties no later than two days before the hearing.
- ~~(b)~~(c) **[Judicial notice]** A party requesting judicial notice of material under Evidence Code sections 452 or 453 ~~shall~~ must provide the court and each party with a copy of the material. If the material is part of a file in the court in which the

1 matter is being heard, the party ~~shall~~ must (1) specify in writing the part of the
2 court file sought to be judicially noticed; and (2) make arrangements with the
3 clerk to have the file in the courtroom at the time of the hearing.
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6 **~~Rule 377. Motion for jury trial~~**
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8 ~~A party desiring a jury trial where the right thereto is not guaranteed by law shall,~~
9 ~~after issue is joined and before or at the time of filing the at issue memorandum, or~~
10 ~~within five days after service of the memorandum by any other party, give notice of~~
11 ~~motion that the whole issue or any specific issues of fact be tried by a jury. A copy~~
12 ~~of the issues of fact proposed for submission to the jury, in proper form, shall be~~
13 ~~served with the notice of motion. A party desiring to vacate the setting for a jury~~
14 ~~trial when the right thereto is not guaranteed by law and when the setting was made~~
15 ~~by the court without opportunity for the party to oppose it, shall, within five days~~
16 ~~after receiving notice from the clerk that the case has been set for jury trial, give~~
17 ~~notice of motion to vacate the setting and to reset the case for trial by the court~~
18 ~~without a jury. Motions shall be noticed for hearing on the earliest day permitted by~~
19 ~~Code of Civil Procedure section 1005, but if the law and motion calendar is not~~
20 ~~regularly heard on that day, the hearing shall be noticed for the next law and motion~~
21 ~~calendar. For good cause shown the court may order the hearing held on an earlier~~
22 ~~or later day on notice prescribed by the court.~~